

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABELARDO MORALES,

Plaintiff,

v.

Civil Case No. 13-12302
Honorable Linda V. Parker

CITY OF JACKSON POLICE
DEPARTMENT, et al.,

Defendants.

_____/

OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S MAY 29, 2014 AND JUNE 25, 2014 REPORTS AND RECOMMENDATIONS [ECF NOS. 37 & 39]; (2) DENYING PLAINTIFF'S MOTION FOR MORE TIME TO PERFECT SERVICE [ECF NO. 40]; (3) GRANTING DEFENDANT JOYCE DRAGANCHUK'S MOTION TO DISMISS [ECF NO. 46]; AND (4) DISMISSING DEFENDANTS

On May 23, 2013, Plaintiff filed this civil rights action against forty-five defendants. Plaintiff has filed return of service forms reflecting service on some defendants; he has failed to serve other defendants. Several defendants have successfully moved for dismissal.¹ The matter has been referred to Magistrate Judge Michael Hluchaniuk for all pretrial proceedings, including a hearing and

¹The following defendants were dismissed with prejudice in an opinion and order issued December 30, 2013: Elmer Hitt, Joseph S. Filip, Dannis M. Diffenderfer, Gilbert Carlson, David Taylor, Karen A. Coffman, Amanda Riska, Michael Overton, and Adam Brown. (ECF No. 34.)

determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation (“R&R”) on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 11.) Presently before the Court are the following: (1) the magistrate judge’s May 29, 2014 Report and Recommendation (“R&R”) recommending that this Court dismiss without prejudice the unserved defendants pursuant to Federal Rule of Civil Procedure 4(m) (ECF No. 37); (2) the magistrate judge’s June 25, 2014 R&R recommending that this Court dismiss with prejudice the remaining served defendants for failure to prosecute (ECF No. 39); (3) Plaintiff’s July 11, 2014 motion for more time to perfect service; and (4) Defendant Judge Joyce Draganchuk’s motion to dismiss and/or for summary judgment, filed July 21, 2014 (ECF No. 46).

**Magistrate Judge Hluchaniuk’s May 29, 2014 R&R and
Plaintiff’s Motion for More Time**

On November 21, 2013, Magistrate Judge Hluchaniuk issued an order requiring Plaintiff to show cause by December 12, 2013, as to why he failed to serve the summons and complaints on the defendants who had not yet been served at that time and as to why his complaint against those defendants therefore should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). (ECF No. 37.) Plaintiff subsequently filed certificates of service reflecting service on some of those defendants, in addition to other defendants who already had been terminated

from this litigation. Plaintiff failed to respond to the show cause order with respect to the following defendants: City of Jackson Police Department, Rick Burkart, Chuck Brant, Kevin Hillar, Richard Cook, Sr., Paul Gross, Matt Peters, John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Dan Joe Wheeler, SSID Mental Disability, John Frye, International Metals and Energy Technology, LTD, Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozkek, Jr., Joyce Draganchuk, Brian E. Thiede, and Victor Stanton.

Therefore, Magistrate Judge Hluchaniuk issued his May 29, 2014 R&R, recommending that the Court dismiss without prejudice those unserved defendants pursuant to Rule 4(m). (ECF No. 37.) At the conclusion of his R&R, Magistrate Judge Hluchaniuk informs the parties that they must file any objections to the R&R within fourteen days. (*Id.* at 4-5.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.* at 5.) No party filed objections to the R&R.

Plaintiff did file a motion on July 11, 2014, seeking an extension of time to perfect service. (ECF No. 40.) That motion, however, does not address Plaintiff’s failure to serve most of the defendants for whom the magistrate judge recommends dismissal. Instead, it refers only to the Honorable Joseph S. Filip and the

Honorable Richard N. LaFlamme (both of whom were already terminated, *see supra* n. 1), the Honorable Joyce Draganchuk, Brian E. Thiede, and John Frye. (*Id.*) With respect to Draganchuk, Thiede, and Frye, Plaintiff fails to show good cause for his failure to serve these defendants within the time prescribed by Federal Rule of Civil Procedure 4. *See* Fed. R. Civ. P. 4(m) (requiring the court to extend the time for service “if the plaintiff shows good cause for the failure” to serve within 120 days). The Court therefore is denying Plaintiff’s motion for an extension of time to serve these defendants.²

The Court has carefully reviewed Magistrate Judge Hluchaniuk’s May 29, 2014 R&R and concurs with the conclusions reached therein. However, because Draganchuk subsequently filed a motion to dismiss and/or for summary judgment which the Court finds to have merit, *see infra*, it declines the magistrate judge’s recommendation to dismiss Plaintiff’s complaint against her *without prejudice*. The Court therefore is dismissing without prejudice Plaintiff’s complaint against these defendants: City of Jackson Police Department, Rick Burkart, Chuck Brant, Kevin Hillar, Richard Cook, Sr., Paul Gross, Matt Peters, John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Dan

²Apparently Plaintiff did serve Draganchuk on June 30, 2014. (ECF No. 47 at n.2.) Draganchuk thereafter filed a motion to dismiss and/or for summary judgment which is addressed *infra*.

Joe Wheeler, SSID Mental Disability, John Frye, International Metals and Energy Technology, LTD, Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozkek, Jr., Brian E. Thiede, and Victor Stanton.

Magistrate Judge Hluchaniuk's June 25, 2014 R&R

On May 29, 2014, Magistrate Judge Hluchaniuk issued a show cause order, requiring Plaintiff to respond by June 9, 2014, as to why the matter should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute these defendants: Douglas Patterson, Patrick Patterson, Sr., Dennis Wayne Patterson, Bob's Takeout/Lotto Ticket Sales, Julius J. Rim, Kevin M. Thomson, and Polish National Hall Alliance Group. (ECF No. 38.) When Plaintiff failed to respond to the show cause order, Magistrate Judge Hluchaniuk issued his June 25, 2014 R&R, recommending that the matter be dismissed with prejudice against these defendants for failure to prosecute. (ECF No. 39.)

At the conclusion of his R&R, Magistrate Judge Hluchaniuk informs the parties that they must file any objections to the R&R within fourteen days. (*Id.* at 6-7.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.* at 7.) No party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with Magistrate Judge Hluchaniuk's recommendation. Therefore, the Court is dismissing with prejudice Plaintiff's complaint against Douglas Patterson, Patrick Patterson, Sr., Dennis Wayne Patterson, Bob's Takeout/Lotto Ticket Sales, Julius J. Rim, Kevin M. Thomson, and Polish National Hall Alliance Group.

Defendant Joyce Draganchuk's Motion to Dismiss and/or for Summary Judgment

On July 21, 2014, Draganchuk filed a motion seeking dismissal and/or summary judgment. (ECF Nos. 46, 47.) Plaintiff has not responded to the motion, although the time for doing so expired on August 14, 2014. *See* E.D. Mich. LR 7.1(e)(1)(B). In her motion, Draganchuk asserts three arguments as to why Plaintiff's complaint should be dismissed against her: (1) it fails to state a claim upon which relief may be granted; (2) she is entitled to absolute immunity; and (3) the *Rooker-Feldman* doctrine bars Plaintiff's claims. The Court finds it necessary to address only one of these arguments, although all have merit.

Plaintiff's claims against Draganchuk arise from Draganchuk's role as the judge presiding over state court matters involving Plaintiff. The federal doctrine of judicial immunity affords judges absolute immunity from suit arising out of the performance of their judicial functions. *Pierson v. Ray*, 386 U.S. 547, 553-54

(1967). “Immunity applies even when the judge is accused of acting maliciously and corruptly.” *Id.* Moreover, judges are “absolutely immune from liability for [their] judicial acts even if [their] exercise of authority is flawed by the commission of grave procedural errors.” *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). This immunity extends to state and federal judges alike and it applies to actions alleging a violation of the United States Constitution. *Briscoe v. LaHue*, 460 U.S. 325, 334 (1983). There are two circumstances where judicial immunity will not shield a defendant; however, neither exception applies in the present matter.³

Therefore, the Court is granting Draganchuk’s motion to dismiss and is dismissing Plaintiff’s complaint against her with prejudice.

Summary

For the reasons set forth above, the Court is adopting Magistrate Judge Hluchaniuk’s May 29, 2014 and June 25, 2014 R&Rs, except as to the dismissal without prejudice of Plaintiff’s claims against Draganchuk. The Court is granting Draganchuk’s motion to dismiss and therefore is dismissing those claims with

³Judges are not immune from liability arising from non-judicial actions nor are they “immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Mireles v. Waco*, 502 U.S. 9, 10-11 (1991).

prejudice. Plaintiff fails to provide good cause to support his motion for more time to perfect service on any defendant.

Accordingly,

IT IS ORDERED, that Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 4(m) against the following defendants: City of Jackson Police Department, Rick Burkart, Chuck Brant, Kevin Hillar, Richard Cook, Sr., Paul Gross, Matt Peters, John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Dan Joe Wheeler, SSID Mental Disability, John Frye, International Metals and Energy Technology, LTD, Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozkek, Jr., Brian E. Thiede, and Victor Stanton;

IT IS FURTHER ORDERED, that Defendant Judge Joyce Draganchuk's motion to dismiss (ECF No. 46) is **GRANTED**;

IT IS FURTHER ORDERED, that Plaintiff's complaint is **DISMISSED WITH PREJUDICE** against the following defendants: Judge Joyce Draganchuk, Douglas Patterson, Patrick Patterson, Sr., Dennis Wayne Patterson, Bob's

Takeout/Lotto Ticket Sales, Julius J. Rim, Kevin M. Thomson and Polish National Hall Alliance Group.

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 10, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 10, 2014, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager